

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Vernon Samuel Brown, #303575,)	CIVIL ACTION NO. 9:11-0019-RBH-BM
)	
Plaintiff,)	
)	
v.)	
)	REPORT AND RECOMMENDATION
Correctional Officer Deangelo Ford and)	
Lieutenant Richard Hodge,)	
)	
Defendants.)	
_____)	

This action has been filed by the Plaintiff, pro se, pursuant to 42 U.S.C. § 1983. Plaintiff, an inmate with the South Carolina Department of Corrections, alleges violations of his constitutional rights by the named Defendants.

The Plaintiff has filed a motion for summary judgment in this case. However, this lawsuit has only recently been filed, and it does not appear that one of the Defendants has even as yet been served with process. Obviously, no discovery has taken place. Further, Plaintiff seeks summary judgment on the grounds that he has exhausted his administrative remedies and that he has set forth a constitutional claim for excessive use of force. However, while both of these assertions may be true, that does not mean that Plaintiff is entitled to summary judgment in this case. The fact that he has asserted a claim prosecutable under § 1983 does not mean that he has proved the allegations of his complaint.



Therefore, for the reasons set forth hereinabove, it is recommended that the Plaintiff's motion for summary judgment be **denied**.

The parties are referred to the Notice Page attached hereto.



Bristow Marchant
United States Magistrate Judge

May 5, 2011

Charleston, South Carolina



Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29401

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

